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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/708,898

03/30/2004

Vladimir Gershman

2897

39376 7590 11/18/2005

VLADIMIR GERSHMAN
3476 COVENTRY PLACE
HOLLAND, PA 18966

EXAMINER

MISKA, VIT W

ART UNIT

PAPER NUMBER

2841

DATE MAILED: 11/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/708,898

Applicant(s)

GERSHMAN, VLADIMIR

Examiner

Vit W. Miska

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 and 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the new patent cited to Timme. The Timme patent discloses a method and apparatus for tracking predetermined time periods including display 36, preprogrammed buttons 39 for selecting 20, 30, 60 minutes, audio device 78, enclosure 20, microprocessor 76, and battery in battery holder 22. Custom time periods may be set using buttons 37.
2. With respect to the device being for tracking rest times during exercise, the claims do not recite any specific structure which distinguishes the claimed device from a general timer with preset time periods. The phrase in claim 1 "where said device attaches to a frame...or a wall" lacks a recitation of any features supporting this function which is not present in Timme. For example, Timme has a strap 42 for attaching the timer to any structure. Therefore, the manner in which the claimed device

is used is of no patentable significance, absent structural differences between the claimed device and the prior art.

3. Regarding and LCD display in claim 1, Timme discloses LED's for the display 36. However, it is well known that LED's and LCD's are employed interchangeably in electronic devices depending upon the specific environment and user preferences. Thus, it would be obvious for one of ordinary skill in the art to substitute an LCD display for the LED type of the prior art of Timme as an obvious and well known alternative.

4. With respect to preset time periods of 30, 60, 90 and 120 seconds and buttons therefor, Timme discloses at least three such preset buttons 39 for 2, 30 and 60 minutes. However, one of ordinary skill in the art would recognize that these are only exemplary and any number of presets may be provided with time periods other than those suggested by patentee to enable signaling of time periods of interest to the user.

5. In claim 3, the "automatic return" to a default and start at default is met in Timme at a default value of "0".

6. With respect to claim 4, "VECLRO" is a well known substitute for straps and other fastening materials and an obvious substitute in Timme.

7. Regarding claim 9, no power switch is disclosed in Timme, thus implying that the device is always on. Further, a switch in any electrical device is always optional, if only an "on" condition is desired.

8. Applicant's remarks have been given careful consideration, but are not persuasive. Arguments with respect to Timme note the device is too complicated, no mention of use as a rest timer, custom capability, LED's instead of LCD's, and no mention of attachment to equipment or frame. The "too complicated" argument is not germane, as this subjective assessment lacks specific support in applicant's claims. The use of the device as a rest timer has been noted above as being a functional statement lacking structural differences. The Timme timer may be used to track periods of time representing any environment. Applicant's disclosed and claimed device is also a self contained generic timer which applicant uses for the purpose of timing rest periods. However, in order to be given patentable weight, the use of the device to track "rest" time must be accompanied by corresponding structural differences with the prior art. With respect to the custom time capability, Timme includes this feature with buttons 37 used for selecting a desired time period, in addition to buttons 39 for custom time periods. The use of LCD's has been noted previously. Concerning the last argument regarding attachment to equipment frame or to a wall, Timme may be attached to any device by means of strap 42. Again, no specific claimed features support this argument.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

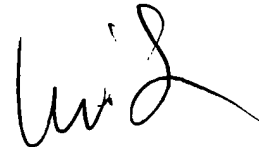
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vit W. Miska whose telephone number is 571-272-2108. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, K. Cuneo can be reached on 571-272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2841

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Vit Miska
Primary Examiner

VM
11/08/2005